

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.70.305,)	ON PROPOSED AMENDMENT
37.70.406, 37.70.407,)	
37.70.408, 37.70.601, and)	
37.70.602 pertaining to)	
pertaining to Low Income)	
Energy Assistance Program)	
(LIEAP))	

TO: All Interested Persons

1. On September 28, 2005, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on September 19, 2005, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.70.305 APPLICATION (1) A new application for low income energy assistance must be made for each new heating season, or when a household changes residence during the heating season. An application is initiated by filing a signed written application on the form prescribed by the department at the office of the local contractor in the area where the applicant lives. If necessary, the contractor will provide assistance in completing the application form.

(2) through (6) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.406 INCOME STANDARDS (1) Households with annual gross income at or below 150% of the ~~2004~~ 2005 U.S. department of health and human services poverty guidelines are eligible for low income energy assistance on the basis of income. Households with an annual gross income above 150% of the ~~2004~~ 2005 poverty

guidelines are ineligible for low income energy assistance, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SSI, TANF-funded cash assistance, or county or tribal general assistance.

(2) The table of income standards for households of various sizes for the ~~2004-2005~~ 2005 heating season may be accessed at the department's website at ~~www.dphhs.state.mt.us~~ www.dphhs.mt.gov, or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, PO Box 202956, Helena, MT 59620.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.407 CALCULATING INCOME (1) Excluded from income are the following types of unearned income and deductions:

(a) through (l) remain the same.

~~(m) all weekly incentive allowances paid under the Job Training Partnership Act, P.L. 97-300 of 1982;~~

~~(n) earnings or allowances paid to participants of any youth employment programs established under P.L. 95-524;~~

~~(o) incentive payments or reimbursement of training-related expenses made to work incentive program participants by the manpower agency;~~

(m) all earnings, work incentive allowances, reimbursement of training related expenses, and other allowances and payments made to a participant in any program under the Workforce Investment Act of 1998, 20 USC 9201 et seq.;

(p) remains the same but is renumbered (n).

~~(q)~~ (o) payments to individual volunteers under Title I (VISTA) of P.L. 93-113, pursuant to section 404(g) of that law;

(r) remains the same but is renumbered (p).

~~(s) (q) one-time insurance payments, compensation for injury or payments from federal or state crime victim compensation programs which do not exceed \$10,000;~~

(t) through (aa)(iii) remain the same but are renumbered (r) through (y)(iii).

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.408 RESOURCES (1) through (2) remain the same.

(3) The value of the family home and the proceeds from the sale of the family home are not included as a resource for 12 months from the date of sale of the family home.

(4) In state fiscal year ~~2005~~ 2006, a household will be eligible if its total countable nonbusiness resources do not exceed ~~\$8,608~~ \$8,840 for a single person, ~~\$12,913~~ \$13,262 for two persons and an amount equal to ~~\$12,913~~ \$13,262 plus ~~\$861~~ \$884 for each additional household member, up to a maximum of ~~\$17,218~~ \$17,683 per household. In addition, the household may have business assets whose equity value does not exceed \$12,500.

(5) The dollar limitations on nonbusiness resources listed elsewhere in this rule shall be adjusted annually by the department on July 1 ~~beginning in calendar year 2001~~ by increasing each limitation by an amount equal to the limitation amount for the previous year, multiplied by the lesser of:

(a) and (b) remain the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The benefit matrices in (1)(c) and (1)(d) are used to establish the benefit payable to an eligible household for a full heating season (October through April). The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) and (b) remain the same.

(c) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 378	\$ 423	\$ 485	\$ 437	\$ 253	\$167
TWO	550	615	706	636	368	243
THREE	749	837	962	866	501	331
FOUR	1,031	1,152	1,323	1,192	690	455

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 362</u>	<u>\$ 407</u>	<u>\$ 469</u>	<u>\$ 374</u>	<u>\$ 251</u>	<u>\$ 166</u>
<u>TWO</u>	<u>526</u>	<u>592</u>	<u>683</u>	<u>544</u>	<u>365</u>	<u>241</u>
<u>THREE</u>	<u>717</u>	<u>806</u>	<u>930</u>	<u>742</u>	<u>497</u>	<u>328</u>
<u>FOUR</u>	<u>987</u>	<u>1,109</u>	<u>1,279</u>	<u>1,020</u>	<u>684</u>	<u>451</u>

(ii) MULTI-FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$320	\$357	\$ 411	\$ 465	\$214	\$141
TWO	482	538	618	700	322	212
THREE	707	790	907	1,027	472	312

FOUR	826	923	1,060	1,200	552	364
------	-----	-----	-------	-------	-----	-----

# BEDROOMS	<u>NATURAL</u> <u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	\$ 306	\$ 344	\$ 397	\$ 398	\$ 212	\$ 140
<u>TWO</u>	461	518	598	599	319	211
<u>THREE</u>	677	761	877	879	469	309
<u>FOUR</u>	790	889	1,025	1,028	547	361

(iii) MOBILE HOME

# BEDROOMS	<u>NATURAL</u> <u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	\$319	\$356	\$409	\$386	\$213	\$141
<u>TWO</u>	466	521	598	565	312	206
<u>THREE</u>	618	690	793	749	413	273
<u>FOUR</u>	689	770	885	836	461	304

# BEDROOMS	<u>NATURAL</u> <u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	\$ 305	\$ 343	\$ 396	\$ 331	\$ 212	\$ 140
<u>TWO</u>	446	501	578	484	309	204
<u>THREE</u>	591	665	767	641	410	270
<u>FOUR</u>	660	742	856	715	458	302

(d) remains the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.602 BENEFIT AWARDS: MISCELLANEOUS (1) and (2) remain the same.

(3) When a household changes residence or type of primary fuel during the heating season, the household may request to have its benefit award recomputed for the new circumstances. When the household changes residence, a new application must be filed. The benefit award for the new circumstances will be equal to the benefit award the household would have received had its original application been for the new circumstances prorated from the date of the change of residence or type of primary fuel. The unused portion of the original benefit award reverts to the department.

(4) remains the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

3. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their

home heating costs. The maximum income standards used to determine whether a household is eligible for LIEAP benefits are contained in ARM 37.70.406. These income standards are computed as a specified percentage of the federal poverty guidelines issued annually by the U.S. Department of Health and Human Services (HHS). The standards currently in ARM 37.70.406 are based on the HHS poverty guidelines for 2004.

HHS updates the poverty guidelines each year to take into account increases in the cost of living. It has been the long standing practice of the Department to amend ARM 37.70.406 each year to provide that the most recent version of the poverty guidelines will be used to set the income standards and benefit amounts for the current heating season. The Department uses the most recent version of the guidelines because they are higher than the guidelines for the previous year. If the Department did not use the most current guidelines, some households might be ineligible for benefits or receive a smaller benefit due to inflationary increases in the household's income which do not reflect an increase in actual buying power.

ARM 37.70.305 governs the process of applying for LIEAP benefits. ARM 37.70.305(1) currently provides that a household must file a new application for each new heating season. The Department proposes to amend the rule to provide that a LIEAP household must also file a new application when the household changes residence during the heating season. This requirement is necessary because ARM 37.70.602(3) provides that when a household changes residence during the heating season it may have its benefit amount recomputed based on the new circumstances. In order for the Department's LIEAP contractor to determine accurately what the recomputed benefit will be, the contractor must have complete information about the household's new circumstances. The amount of the new benefit depends on a number of factors, such as type of primary heating fuel, type of dwelling, and number of bedrooms. Any or all of these factors may change when the household moves to a new residence. For example, if the household moves from a one bedroom house heated with fuel oil to a two bedroom house heated with propane, which is a more expensive type of heating fuel, the household may be entitled to a higher benefit.

The benefit also depends on the household's income, which may change if the household's composition changes when they move. For example, the household may now be sharing a residence with additional relatives or friends whose income would have to be considered in determining the household's benefit. Thus, in view of the number of factors involved in determining eligibility, it is necessary for the household to complete a new application so that the contractor will have complete and accurate information about the household's new circumstances. If the contractor recomputes the benefit based on a report of the move without a new application being required, it is possible that the contractor will not obtain information about

all circumstances that have changed due to the move and may not correctly redetermine the household's benefits. Thus, it is necessary to amend both ARM 37.70.305(1) and ARM 37.70.602(3) to require the filing of a new application when a household moves during the heating season.

ARM 37.70.407(1) lists types of income that are excluded in determining LIEAP eligibility. The Department proposes to amend section (1) by deleting subsections (m), (n), and (o), which currently provide for the exclusion of various types of allowances and payments received by participants in various work incentive programs and youth employment programs created by the Job Training Partnership Act (JTPA) that no longer exist. Since these programs no longer exist, there is no need to exclude payments from these programs. Therefore, these subsections are being replaced by a new subsection (m) which will provide for the exclusion of allowances, earnings, and payments made to participants in programs under the Workforce Investment Act of 1998, 29 USC 9201 et seq., which superceded JTPA. It is necessary to exclude these types of income because Section 181 of the Workforce Investment Act, 20 USC 9231, mandates that all allowances, earnings and payments to individuals participating in programs under the Act shall not be counted in determining eligibility for federally funded need based programs, which includes LIEAP.

Additionally, the Department proposes to amend subsection (1)(s), which currently excludes one time insurance payments, compensation for injury, or payments from federal or state crime victim compensation programs, if the payments or compensation do not exceed \$10,000. Such one time payments are excluded because the household commonly uses them to repair or replace lost property or to pay for a one time expense rather than to pay ongoing living expenses, and hence the payments are not available to pay heating expenses. For example, payment from homeowners' insurance or motor vehicle insurance are generally used to repair or replace a home, car, or other property that has been damaged, destroyed, or stolen, and life insurance is commonly used to pay burial expenses. The Department proposes to delete the provision that the payment cannot exceed \$10,000 because the household may need more than \$10,000 to repair or replace lost property or to pay for a one time expense. If only the first \$10,000 of these one time payments is excluded, funds that are not available for routine living expenses because they are earmarked for another specific purpose, for example, rebuilding a home damaged by a flood or fire, will be counted as income and may make the household ineligible, which the Department believes is unfair. It should be noted that ARM 37.70.407(1)(s) only excludes these payments as income in the month of receipt. If all of the payment is not spent, the remainder will eventually be counted as a resource to the household.

In determining eligibility for LIEAP, the Department considers

not only income but also what resources the household has that can be used to pay heating costs. ARM 37.70.408 specifies the rules relating to resources. ARM 37.70.408(3) currently provides that the value of the family home and the proceeds from the sale of the family home are not counted as a resource in determining LIEAP eligibility. The proceeds of the sale of the home are excluded because very often the household plans to use the proceeds to buy a new home for the family, and hence the proceeds are not available to pay routine living expenses. The Department proposes to amend section (3) by specifying that the proceeds of the sale of a family home will not be counted for a period of 12 months from the date of sale. This limitation on the exclusion is necessary because the funds are available for other purposes if the household has not used them to buy another family home within a reasonable time. The Department believes 12 months is a reasonable amount of time for a family to find and purchase a new home if that is their intention.

Additionally, section (4) currently specifies the maximum amounts of nonbusiness resources that households of various sizes can have and still qualify for LIEAP in state fiscal year 2005. Section (5) currently states that the dollar limits on nonbusiness resources will be adjusted annually beginning in calendar year 2001. The purpose of the annual adjustment is to account for inflation. However, the statement in section (5) that the adjustment will begin in 2001 is no longer necessary, since that date is long past, so the phrase "beginning in calendar year 2001" is now being deleted. Section (5) further provides that the adjusted nonbusiness resource limits will be computed by multiplying the current dollar limits by the percentage increase in the national consumer price index (CPI) for the previous calendar year or by 3%, whichever is less. The CPI for 2004 was 2.7%, so the Department is increasing the dollar amounts for fiscal year 2006 by 2.7%, since that is less than 3%.

ARM 37.70.601 contains tables of benefit amounts which are used to establish the amount of benefits an eligible household will receive. As previously discussed, the amount of the household's benefit depends on multiple factors, including income level, type of primary heating fuel, the type of dwelling and number of bedrooms, and the heating district in which the household is located. The benefit amounts in the table are being revised based on the expected appropriation of federal funds for the Montana LIEAP program and other funds available to pay LIEAP benefits as explained below, as well as fuel cost projections for the upcoming heating season and an estimate of the number of households that will apply and be found eligible for LIEAP.

Based on the budget submitted by the Bush Administration, the Department estimates that Montana's federal LIEAP appropriation for the 2005-2006 heating season will be \$10,841,000. In addition to the federal appropriation, there are also \$412,597 of state funds appropriated by the 59th Montana Legislature in

House Bill 2 for LIEAP and other funds such as LIEAP funds carried over from 2004-2005 available to pay LIEAP benefits in 2005-2006. Thus, benefits for 2005-2006 are calculated based on total funding of \$11,824,912. This compares to a total funding of \$14,828,864 for 2004-2005, which included federal appropriations of \$12,781,838, \$695,361 in state funds appropriated for LIEAP by the 59th Montana Legislature in House Bill 332, and other funds such as Temporary Assistance for Needy Families (TANF) funds and LIEAP funds carried over from 2003-2004. Total LIEAP funding for 2005-2006 is therefore estimated to be \$3,003,952 less than funding for 2004-2005.

The Department estimates that 21,820 households will qualify for LIEAP benefits for the current heating season, which would be a 5% increase over the number of households that received LIEAP last year. This projected increase in the LIEAP caseload is based on the rate of growth in the caseload in past years and also takes into consideration the fact the more households may apply this year due to rising fuel prices. When fuel prices are lower, some households who are eligible for LIEAP may not apply for assistance, whereas they are more likely to seek assistance as the cost of heating their homes increases. Since the total funds available to pay benefits are less than last year, and the estimated number of eligible households is greater, benefits will be smaller for the 2005-2006 heating season than in the previous year. It is estimated that the average household will receive a LIEAP benefit for the current heating season which is \$127 less than last year's benefit.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on October 6, 2005. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Russ Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State August 29, 2005.